

## Message Text

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DODE-00 FRB-03 H-02 INR-07 INT-05 L-02 LAB-04 NSAE-00

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DRAFTED BY EB/OT/STA:WCLARK,JR.:CLJ

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E.O. 11652: N/A

TAGS: ETRD, EEC

SUBJECT:EC NOTE VERBALE ON CHEESE COUNTERVAILING PROBLEM

1. FOLLOWING IS TEXT OF NOTE VERBALE DELIVERED TO ACTING SECRETARY BY HEAD OF EC DELEGATION Krag ON MARCH 14. DELEGATION REPS STRESSED THAT TEXT HAD BEEN APPROVED BY COREPER AND WAS THEREFORE ONE STEP ABOVE COMMISSION DOCUMENT.

BEGIN TEXT: THE DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF STATE AND HAS THE HONOUR TO REFER TO THE QUESTION OF POSSIBLE COUNTERVAILING DUTIES ON COMMUNITY DAIRY EXPORTS TO THE UNITED STATES.

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THE COMMISSION UNDERSTANDS THAT, FOLLOWING THE U.S. TREASURY'S RECENT DETERMINATION THAT COMMUNITY EXPORT REFUNDS ON CHEESE EXPORTED TO THE UNITED STATES CONSTITUTE A BOUNTY OR GRANT, IT MAY BE THE INTENTION OF THE U.S. GOVERNMENT TO APPLY, IN THE VERY NEAR FUTURE, COUNTERVAILING DUTIES ON THOSE COMMUNITY CHEESES WHICH BENEFIT FROM SUCH REFUNDS.

THE DELEGATION IS INSTRUCTED TO EXPRESS THE GRAVE MISGIVING OF THE EUROPEAN COMMUNITY AT THIS PROSPECT. THE APPLICATION OF COUNTERVAILING DUTIES IN THIS CASE WOULD BE WITHOUT ECONOMIC JUSTIFICATION, WOULD BE INCOMPATIBLE WITH A BASIC PRINCIPLE OF THE GATT AND COULD GIVE RISE TO SERIOUS CONSEQUENCES FOR TRADE RELATIONS BETWEEN THE UNITED STATES AND THE COMMUNITY.

THE COMMUNITY'S CASE AGAINST THE APPLICATION OF COUNTERVAILING DUTIES RESTS ON THREE COUNTS, AS FOLLOWS:

FIRST, COMMUNITY CHEESE EXPORTS ARE NOT AT THE ROOT OF THE CURRENT ECONOMIC DIFFICULTIES OF THE U.S. DOMESTIC DAIRY INDUSTRY. THESE DIFFICULTIES ARE WELL UNDERSTOOD IN EUROPE. COMMUNITY CHEESES ACCOUNT FOR LESS THAN 5 PERCENT OF THE U.S. DOMESTIC CHEESE MARKET AND BY NO MEANS, DO ALL THESE EUROPEAN CHEESES RECEIVE AN EXPORT REFUND. AS THE U.S. ADMINISTRATION IS AWARE, THERE IS NO INTENTION ON THE PART OF THE COMMUNITY TO CONDUCT AN AGGRESSIVE CHEESE EXPORT POLICY TO THE U.S., ONLY THE LEGITIMATE WISH TO RETAIN A TRADITIONAL AND VERY SMALL SHARE OF THE U.S. MARKET. REASSURANCE TO THE U.S. DOMESTIC PRODUCERS IS TO BE FOUND IN THE FACT THAT THE COMMUNITY HAS:(A) CONSIDERABLY REDUCED THE LEVEL OF ITS EXPORT REFUNDS, (B) AGREED TO MONITOR THE FUTURE IMPACT OF COMMUNITY CHEESE EXPORTS ON THE U.S. MARKET, WITH A VIEW TO MAKING FURTHER ADJUSTMENTS TO EXPORT REFUNDS SHOULD THEY BE NECESSARY.

TO APPLY COUNTERVAILING DUTIES IN THESE CIRCUMSTANCES WOULD THEREFORE BE TO EXCLUDE THE CHEESES CONCERNED FROM THEIR TRADITIONAL MARKET, AND THUS CONSTITUTE A MEASURE OF PROTECTIONISM, WITHOUT HOWEVER RELIEVING THE DOMESTIC LIMITED OFFICIAL USE

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DIFFICULTY.

SECOND, THE UNITED STATES AND THE EUROPEAN COMMUNITY SHARE A JOINT RESPONSIBILITY FOR THE PRUDENT AND CONSTRUCTIVE MANAGEMENT OF THEIR TRADE RELATIONS. THIS JOINT RESPONSIBILITY IS OF PARTICULAR IMPORTANCE IN PRESENT CONDITIONS OF WORLD ECONOMIC RECESSION AND IN THE GENERAL CONTEXT OF THE OECD TRADE PLEDGE AGAINST BEGGAR-THY-NEIGHBOUR

POLICIES.

IN RESPONSE TO THE REQUEST OF THE U.S. GOVERNMENT LAST SUMMER, THE COMMUNITY BELIEVES IT HAS EXERCISED FORBEARANCE IN HANDLING ITS PART IN THE JOINT RESPONSIBILITY OF BOTH SIDES IN THE PRESENT ISSUE. THUS, DESPITE CONSIDERABLE COMMERCIAL, SOCIAL AND POLITICAL DIFFICULTY WITHIN THE COMMUNITY, EXPORT REFUNDS ON COMMUNITY CHEESES FOR THE U.S. MARKET WERE TEMPORARILY SUSPENDED IN JULY 1974 AND

THE SUSPENSION WAS MAINTAINED UNTIL FEBRUARY OF THIS YEAR. THE PURPOSE OF THIS ACTION WAS TO ALLOW TIME FOR REFLECTION TO THE U.S. ADMINISTRATION AND TO AFFORD IT THE POSSIBILITY OF USING THE PROVISIONS OF THE TRADE BILL, ONCE IT HAD BECOME LAW, FOR THE PURPOSES OF A CONSTRUCTIVE AND MUTUALLY ACCEPTABLE SOLUTION. DURING THE PERIOD OF SUSPENSION, THE COMMUNITY COOPERATED WITH THE U.S. AUTHORITIES IN HANDLING PROBLEMS ARISING FROM THE ARRIVAL ON THE U.S. MARKET VIA THIRD COUNTRIES OF CHEESES WHICH HAD BENEFITED FROM EXPORT REFUNDS. FINALLY, WHEN EXPORT REFUNDS WERE RESUMED AFTER THE ENACTMENT OF THE TRADE BILL, THE LEVEL OF THESE REFUNDS WAS REDUCED AND A BASIS WAS ESTABLISHED UPON WHICH BOTH PARTIES COULD CONTINUE TO COOPERATE IN THE LIGHT OF FUTURE MARKET DEVELOPMENTS. IT IS AGAINST THIS BACKGROUND THAT THE COMMUNITY LOOKS TO THE UNITED STATES TO MATCH ITS OWN EFFORTS AT CRISIS MANAGEMENT.

THIRD, THE APPLICATION OF COUNTERVAILING DUTIES IS INCOMPATIBLE WITH A BASIC PRINCIPLE OF THE GATT, ACCORDING TO WHICH MATERIAL INJURY TO A DOMESTIC INDUSTRY, OR THREAT THEREOF, MUST BE DEMONSTRATED. THE CURRENT MULTILATERAL TRADE NEGOTIATIONS, WHICH THE U.S. GOVERNMENT PLAYED SO LIMITED OFFICIAL USE

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PROMINENT A PART IN LAUNCHING IN TOKYO IN 1973, ARE TO ESTABLISH A FUTURE BALANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS IN THIS FIELD. IF THE U.S. WERE NOW TO INVOKE THE SO-CALLED "GRANDFATHER CLAUSE" OF THE GATT IN ORDER TO APPLY COUNTERVAILING DUTIES UNDER WHAT IS ULTIMATELY A U.S. STATUTE DATING BACK TO 1897, THIS COULD NOT FAIL TO JEOPARDIZE THE SUCCESSFUL OUTCOME OF THE MULTILATERAL TRADE NEGOTIATIONS IN A KEY SECTOR.

THE DELEGATION IS ACCORDINGLY INSTRUCTED TO REQUEST THAT THE SECRETARY OF THE TREASURY USE THE TEMPORARY PROVISION IN SECTION 331 OF THE TRADE ACT OF 1974 TO SUSPEND COUNTERVAILING DUTIES. IN THE VIEW OF THE COMMUNITY, THE CRITERIA STATED IN SECTION 303(D)(2) OF THE TARIFF ACT OF 1930, AS NOW AMENDED, HAVE BEEN SATISFIED, IN THAT:

(A) ADEQUATE STEPS HAVE BEEN TAKEN BY THE COMMUNITY TO  
REDUCE SUBSTANTIALLY ANY ADVERSE EFFECT ON THE U.S.  
DOMESTIC MARKET WHICH THE COMMUNITY'S EXPORT REFUND SYSTEM  
MIGHT BE ALLEGED TO HAVE CAUSED;  
(B) A REASONABLE PROSPECT EXISTS OF SUCCESSFUL TRADE AGREE-  
MENTS WITHIN THE FRAMEWORK OF THESE NEGOTIATIONS; AND  
(C) THE IMPOSITION OF COUNTERVAILING DUTIES ON COMMUNITY  
CHEESE EXPORTS COULD JEOPARDIZE THE SATISFACTORY COMPLE-  
TION OF THE MULTILATERAL TRADE NEGOTIATIONS.

ON THE ASSUMPTION THAT THE APPLICATION OF COUNTERVAILING  
DUTIES WILL BE SO SUSPENDED BY THE SECRETARY OF THE  
TREASURY, THE COMMUNITY REAFFIRMS ITS WILLINGNESS TO  
CONTINUE TO COOPERATE WITH THE U.S. AUTHORITIES IN THIS  
MATTER, ALONG THE LINES ALREADY AGREED.

IF, ON THE OTHER HAND, THE DISCRETION IN THE TRADE ACT  
SHOULD NOT BE SO EMPLOYED, AND CONSEQUENTLY COUNTERVAILING  
DUTIES SHOULD BE APPLIED, THIS WOULD NOT ONLY GIVE RISE TO  
KEEN DISAPPOINTMENT AND PROTEST BUT WOULD ALSO OBLIGE THE  
COMMUNITY TO RESERVE ITS RIGHT TO TAKE APPROPRIATE ACTION  
IN DEFENCE OF ITS INTERESTS.

THE DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNI-  
TIES TAKES THE OPPORTUNITY TO RENEW TO THE DEPARTMENT OF  
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STATE THE ASSURANCE OF ITS HIGHEST CONSIDERATION.END TEXT.

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## Message Attributes

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**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
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**Draft Date:** 14 MAR 1975  
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**Disposition Case Number:** n/a  
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**Disposition Date:** 28 MAY 2004  
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